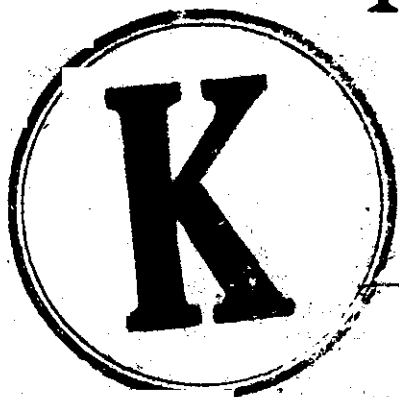


19 46.

File No. O. Khoti / 46



A BRANCH

Subject:—

Opinions under the Khoti
Settlement Act, 1880.

175
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File No.

O. Khoti / 46

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C O N T E N T S

Legal Department File No 6. Khoti 1946

Sr. No.	R. I. / O. No.	Subject	Pages.
	Ol. Khoti 1946	Opinions under the Khoti Settlement Act, 1880	
1.	<u>3856</u> 23-5-46	Whether there would be no legal bar to the Khots Demanding royalty for his consent to the transfer of a permanent tenants rights in land	1-2
2.	E.R. R. D. No. 1501/45 <u>10-6-46</u>	Legality of Khots consent under Sec. 9 for recovery cooperative Societies ones.	3-5

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5 Cs.

PHB
12/7

NKB
12/7

It appears that certain co-operative societies in Ratnagiri District have been experiencing difficulty in recovering their dues from khoti tenants as in the proceedings taken for the recovery of such dues their khoti lands cannot be sold without the consent of the khot, and this consent cannot be obtained without paying royalty demanded by the khot.

2. The Commissioner, Southern Division, agreeing with the Collector of Ratnagiri is of the opinion that "there would be no legal bar to the khots demanding royalty for his consent to the transfer of a permanent tenant's rights in land. When, however, the proposed Khoti Settlement (Amendment) Bill, 1945, becomes law, and the Bombay Tenancy Act, 1939, is introduced in the Ratnagiri District, the Khot's consent in such cases would not be necessary." The question raised by R.D. for the consideration of the R.L.A. is whether the view taken by the Commissioner, Southern Division, is correct.

3. Under the provisions of section 9 of the Khoti Settlement Act, 1880, occupancy tenants rights in khoti land though heirtable are not otherwise transferable without the consent of the Khot, except in cases specified therein- cases which are not relevant for the purpose of the present reference. So far as I can see there is no legal bar to the Khot demanding royalty for his consent to the transfer of occupancy tenants rights in Khoti land, and there is no provision under which the Khot can be compelled to give his unconditional consent.

4. Government by Government Notification, R.D.No. 1140/45 (b) dated the 11th April 1946, has extended the provisions of sections 2 and 14 to 31 (both inclusive) of the Bombay Tenancy Act, 1939, to the villages held by khots in the districts of Ratnagiri and Kolaba, after the Commissioner, Southern Division, had raised the question that is under consideration. As a result of the said notification, section 9 of the Khoti Settlement Act, stands amended by

... of the provisions of section 31 of the Bombay Tenancy Act, 1939. Under section 9 of the Khoti Settlement Act, as so amended the rights of privileged occupants, have been made transferable and the consent of the khot for this transfer is no longer necessary. The position would apparently remain the same even after the Khoti Settlement (Amendment) Bill, 1945, becomes law in the form in which it stands at present.

Therefore the view taken by the Commissioner, Southern Division is correct.

Sd/--P.N.Moos

o.c.

22/5/46

Remembrancer of Legal Affairs.

U.R. to R.D. No., 3856 dated the 23rd May 1946.

Hjr/9/7

4 Cs.

Government of Bombay
Revenue Department.
Resolution No. 1591/45.
Bombay Castle, 10th June 1946.

Letter from the Registrar of Co-operative Societies,
No L.S.D. /46, dated the 12th November 1945 :-

"I have to request that the question raised in the following paragraphs may kindly be referred to the Remembrancer of Legal Affairs, with a view to obtain his authoritative opinion on the same.

In the district of Ratnagiri, a large part of land is held on khoti tenure. The main incident of this tenure is that no tenant, either annual or permanent, - can alienate the land without the consent of the managing khot. This feature of the tenure has been causing considerable difficulties to the co-operative societies particularly societies in liquidation in recovering the dues owed by Khoti tenants. In the proceedings taken for recovery of societies' dues the lands of Khoti tenants have to be sold and sales cannot be effected unless the khot gives his consent and it is reported that such consent cannot be obtained without payment of royalty demanded by the khot. It is understood that khots demand royalty varying from 15 to 30 per cent. of the Panchnama value or bid money for allowing alienation of the lands.

The difficulty therefore requires to be surmounted by allowing the liquidator to pay the royalty and debit the amount as expenses of recovery. This expenditure will ultimately fall on the creditors who are otherwise likely to lose their claims. The question whether the khot can legally claim royalty for giving his consent to transfer of land, is not free from doubt and therefore requires clarification.

As to the scale at which amount of royalty/~~shall~~^{should} be paid by the societies to the khots the question would be taken up by me after Remembrancer of Legal Affairs' opinion as regards the legality of this procedure is received."

Government memorandum, Reconstruction Department, No. 463
D. dated the 4th December 1945.

Letter from the Commissioner, S.D., No. K.H.T. 100, dated the 30th January 1946:-

" X X X

xTyping as an
accompaniment
to his Resol-
ution.

"2. I enclose a copy of letter, No. K.H.T., dated 29th December 1945 from the Collector of Ratnagiri. I agree with the Collector that there would be no legal bar to the Khot's demanding royalty for his consent to the transfer of a permanent tenant's rights in land. When, however, the proposed Khoti Settlement (Amendment) Bill, 1945, becomes law and the Bombay Tenancy Act, 1939 is introduced in the Ratnagiri district, the khot's consent in such cases would not be necessary."

Memorandum.

P.T.O.

Memorandum from the Remembrancer of Legal Affairs,
No. 3856, dated the 22nd May 1946. :-

"It appears that certain co-operative societies in Ratnagiri district have been experiencing difficulty in recovering their dues from khoti tenants as in the proceedings taken for the recovery of such dues their khoti lands cannot be sold without the consent of the khot, and this consent cannot be obtained without paying royalty demanded by the khot.

" 2." The Commissioner, Southern Division, agreeing with the Collector of Ratnagiri is of the opinion that 'there would be no legal bar to the khots demanding royalty for his consent to the transfer of a permanent tenant's rights in land. When, however, the proposed Khoti Settlement (Amendment) Bill, 1945, becomes law, and the Bombay Tenancy Act, 1949, is introduced in the Ratnagiri district, the Khot's consent in such cases would not be necessary'. The question raised by Revenue Department for the consideration of the Remembrancer of Legal Affairs is whether the view taken by the Commissioner, Southern Division, is correct.

" 3." Under the provisions of section 9 of the Khoti Settlement Act, 1880, occupancy tenants rights in khoti land though heritable are not otherwise transferable without the consent of the khot, except in cases specified therein, - cases which are not relevant ~~thereafter~~ for the purpose of the present reference. So far as I can see there is no legal bar to the Khot demanding royalty for his consent to the transfer of occupancy tenants rights in Khoti land, and there is no provision under which the Khot can be compelled to give his unconditional consent.

" 4." Government by Government Notification, Revenue Department, No. 1140/45(b), dated the 11th April 1946, has extended the provisions of sections 2 and 14 to 31 (both inclusive) of the Bombay Tenancy Act, 1939, to the villages held by khots in the districts of Ratnagiri and Kolaba, after the Commissioner, Southern Division, had raised the question that is under consideration. As a result of the said notification, section 9 of the Khoti Settlement Act, stands amended by virtue of the provisions of section 31 of the Bombay Tenancy Act, 1939. Under section 9 of the Khoti Settlement Act, as so amended the rights of privileged occupants, have been made transferable and the consent of the khot for this transfer is same even after the Khoti Settlement (Amendment) Bill, 1945, becomes law in the form in which it stands at present. *no longer necessary
the position and
apparently remains
the same*

Therefore the view taken by the Commissioner, Southern Division is correct."

Resolution.-- Copies of the Remembrancer of Legal Affairs'

Opinion, No 3856, dated 23rd May 1945, should be forwarded to the officers concerned for information and guidance.

By order of the Governor of Bombay,

N.V. OZA,

Under Secretary to Government.

G.R.,

Mjr/9/7
5 Cs.

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G. R. No 115015/45, R.D., dated the 10th June 1946

To

The Commissioner, S.B.,
The Registrar of Co-operative Societies,
The Collector of Ratnagiri,
The Collector of Kolaba,
The Remembrancer of Legal Affairs.

Accompaniment to Government Resolution, Revenue Department, No 1504/45, dated the 10th June 1946.

Letter from the Collector of Ratnagiri, No K.H.T., dated the 29th December 1945, to the Commissioner, S.D.

I would say that the Co-operative Societies are to blame for advancing loans on unsound security. They should have made themselves sure that the sureties for the debtors had immoveable property over which they had clear title and saleable interest. Now they cannot blame the khots and complain that the Khoti Act comes in their way of recovery.

2. It is not known how much royalty the khots demand for giving consent to the sale of the permanent tenants' land. Complaints of such nature do not come before revenue officers because the Khots are within their bounds if they do levy such royalty and Government have no remedy under the existing law. I do not say that the khots do not levy such royalty but I do not think they do so in each and every case. I may estimate that in 50 per cent. of the transactions at least they must be demanding some consideration for their consent.

3. Although the arbitrary demand of a monetary consideration for the grant of consent is manifestly unjust it seems there is no legal bar at present against the demand of a royalty. If it was not legal, some test case would have been made since 1880 when the Khoti Act was passed. I may, however, suggest a remedy to restrict the amount of consideration, viz., that a rule might be made under clause (e) of section 40 of the Khoti Settlement Act, 1880, to the effect that the maximum consideration, if any, leviable by the Khot for his consent to the sale of a permanent tenant's land should be one percent of the sale money or one year's assessment. Legal Opinion may be obtained on the point whether such a rule would be ultra vires of the Act. If such a rule could be made, the royalty may be debited as expenses of recovery of the dues as suggested by the Joint Registrar.

4. There is, however, no remedy to compel the Khot to give his consent and in such a case the recovery would be impossible.

5. On the introduction of the Bombay Tenancy Act, 1939 into this district, the Khot's consent goes away (vide section 31 of that Act) and permanent tenancies become transferable properties.

of 1946

No.

Copy forwarded for information and guidance to.

Mjr/9/7
4 Cs.